

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 15 2008

JOOCHUL KIM,

Plaintiff - Appellant,

v.

ARIZONA BOARD OF REGENTS,
ARIZONA STATE UNIVERSITY,
MICHAEL CROW, JOHN MEUNIER,
AND ALVIN MUSHKATEL

Defendants - Appellees.

No. 06-17108

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

D.C. No. CV 04-1931-PHX-
MHM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, District Judge, Presiding

Argued and Submitted July 17, 2008
San Francisco, California

Before: **W. FLETCHER, TALLMAN**, Circuit Judges, and **BERTELSMAN**,
District Judge.**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

Plaintiff/Appellant Joochul Kim (“Kim”) appeals the district court’s grant of summary judgment to the Arizona Board of Regents, Arizona State University, Michael Crow, John Meunier, and Alvin Mushkatel (collectively “the University”) on Kim’s claims for national origin/race discrimination and violation of due process pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, 42 U.S.C. § 1981, and 42 U.S.C. § 1983.¹

We find a genuine issue of material fact regarding whether the University discriminated against Kim on the basis of his Asian ethnicity in denying Kim’s application for promotion to full professor. Kim produced evidence of a discriminatory bias on the part of members of the relevant committees, which a jury could reasonably infer tainted the review and re-review process. We have embraced the proposition that “discrimination at any stage of the academic hiring or promotion process may infect the ultimate employment decision.” *Lam v. University of Hawai’i*, 40 F.3d 1551, 1560 (9th Cir. 1994) (citation omitted). The district court thus erred in granting summary judgment on Kim’s discrimination claim.

We conclude, however, that the district court correctly ruled that the

¹We find that although Kim’s notice of appeal encompassed the district court’s dismissal of his retaliation claim, Kim effectively abandoned that claim on appeal by failing to make any argument in support of it. *See U.S. v. Williamson*, 439 F.3d 1125, 1138 (9th Cir. 2006).

University was entitled to summary judgment on Kim's due process claim. The procedures which Kim alleges were violated did not enhance Kim's expectation of obtaining a full professorship enough to establish a constitutionally protected interest that would trigger the procedural due process guarantee. *See Goodisman v. Lytle*, 724 F.2d 818, 821 (9th Cir. 1984).

AFFIRMED IN PART, REVERSED IN PART, and REMANDED. Costs on appeal are awarded to the Appellant.